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IN THE

Supreme Court of the United States

OCTOBER TERM—1949

No. 758

FRANK SGAMBATI,

Petitioner,

—against—

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PAUL KASTENBAUM
Proctor for Petitioner

JACOB RASSNER
JACK STEINMAN
On Petition

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Opinion Below

The opinion of the United States Court of Appeals for the Second Circuit is reported at 172 Fed. (2nd) 297.

Jurisdiction

The judgment of the United States Court of Appeals was entered on the third day of February, 1949.

The jurisdiction of this Court is invoked pursuant to the provisions of Title 28 U. S. C. §1254(1).

Question Presented

The issue is whether the statute of limitations contained in the Suits in Admiralty Act (46 U. S. Code Secs. 741-752)

and/or the Public Vessels Act (46 U. S. Code Secs. 781-790) was tolled during the period of infancy of the petitioner.

Stage in the Proceedings When the Question Arose

The respondent moved to dismiss the within suit on the ground that it was barred by limitation.

The motion of respondent was granted by the District Court. Its opinion is reported in 75 Fed. Supp. p. 18(2).

Petitioner appealed to the Court of Appeals for the Second Circuit, which Court affirmed the judgment of the Court below. The opinion of the Court of Appeals for the Second Circuit is reported in 172 Fed. (2nd) 297.

Statement of Facts

Frank Sgambati, the petitioner herein, was injured on the 27th day of December 1942, while engaged in the performance of his duties as a rigger aboard the respondent's vessel S.S. B-29. As appears from the opinion of the District Court, the petitioner was born on February 19, 1925, which would make him just short of eighteen years of age at the time of the injury complained of. The present suit was commenced on February 13, 1947, approximately four years after the date of the occurrence complained of, but within one year from the time petitioner attained his majority.

The question presented by this petition is whether, in a suit in admiralty, brought under the Suits in Admiralty Act (46 U. S. C. A. Sec. 741 *et seq.*), and the Public Vessels Act (46 U. S. C. A. Sec. 781 *et seq.*), the statute of limitations runs from the date the injury occurs, or in the case of an infant, from the date of his attaining his majority.

The instant petition presents a question on which there does not appear to be any direct, controlling authority.

The text of the statutes referred to above does not in any wise advert to the problem of infant seamen, insofar as the statute of limitations is concerned. The legislative history does not reveal any indication by Congress one way or the other, as to the running of the statute of limitations against infants. No case has been found directly in point.

The cases cited by the District Court and by the Court of Appeals should not be regarded as determinative by this Court. *Engel* v. *Davenport,* 271 U. S. 33, involved the Jones Act and so far as appears from the opinion, there was no question of infancy involved. *Atlantic Coast Line R.R.* v. *Burnette,* 239 U. S. 199, involved the Employers' Liability Act, not the statutes involved here, and there is no discussion whatever of infancy, in the opinion of the Supreme Court. The case of *Piascik* v. *U. S.,* 65 Fed. Supp. 430, does not deal with the question of infancy, as involved in the statute of limitations under the Suits in Admiralty Act or the Public Vessels Act. The case of *Kiel* v. *United States,* 65 Fed. Supp. 431 does not deal with the question of infancy. The case of *New York Central R. Co.* v. *Tonsellito,* 244 U. S. 360 does not involve the statutes involved herein. *Osbourne* v. *United States,* 164 Fed. (2nd) 767 does not involve the problem of infancy under the statutes pertinent here.

Logical considerations, as well as considerations of fairness, particularly for wards of the Admiralty, require the statute of limitations herein (two years) to be computed from the date of the libelant's attainment of his majority.

The most recent authority which discusses in great detail the problem of limitations under the Suits in Admiralty Act is *Osbourne* v. *U. S.,* 164 Fed. (2nd) 767. There again, the question of infancy was not involved in the holding of the court, but is dealt with by way of dictum. The court held that limitations under the Suits in Admiralty Act or the Jones Act, applying to a libel for injuries sustained by a

seaman, were tolled for the period during the recent war that the seaman was interned by the enemy. No statutory provision existed for tolling the statute of limitations under the conditions referred to.

The distinction between substantive and ordinary or precedural statutes of limitation is discussed in the *Osbourne* case, *supra,* and the court points out that the chief reason for making the distinction is to make the period named in the statute control, rather than the law of the forum in the event of actions brought in State Courts. This reasoning does not militate against the petitioner herein, for actions under the statutes involved herein may only be brought in the District Courts of the United States (46 U. S. C. A. 742 and 46 U. S. C. A. 782). Therefore, merely to call the statute of limitations herein "substantive" does not defeat the petitioner's claim.

The Court in the *Osbourne* case, *supra,* says at page 769 "All statutes of limitation are based on the assumption that one with a good cause of action will not delay bringing it for an unreasonable period of time; but, when a plaintiff has been denied access to the courts, the basis of the assumption has been destroyed."

It is respectfully submitted, that all statutes of limitation are also based on the assumption that they deal with individuals who have full capacity to seek access to the courts. Whether one be held in custody as a prisoner of war, and the courts therefore unavailable to him, or whether he be held under legal disability, the result is the same, namely, that there is destroyed the basis of an assumption on which the statute of limitations rests.

In its dictum, the court in the *Osbourne* case states that infancy will not toll the statute of limitations under the Suits in Admiralty Act. The authorities cited for this position do not support it; the cases do not even arise under the Suits in Admiralty Act. See footnote 5 page 768 of the opinion in the *Osbourne* case, *supra.*

Reasons for Granting the Writ

As pointed out hereinabove, the petition presents a substantial question of Federal statutory interpretation. There does not appear to be any direct controlling authority on the issue presented. No case cited by either the District Court or the Court of Appeals for the Second Circuit is directly in point.

The within petition should be granted for the guidance of the bench and bar.

CONCLUSION

No citation of authority will be made to burden this Court as to the status of seamen and those performing the work of seamen, and particularly infants performing such work, as wards of Admiralty.

The suit herein was brought within one year after the attainment of majority, by one who had been injured before he was even eighteen years of age.

It is respectfully submitted that such claim was not intended to be outlawed by the statute of limitations contained in the Suits in Admiralty Act.

Particularly in the light of the fact that the petition involves the Federal statutory rights of an infant, and in further light of the fact that this Honorable Court has not heretofore decided the question presented herein, it is respectfully urged that the petition be granted by this Honorable Court.

PAUL KASTENBAUM
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JACK STEINMAN
On Petition

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FRANK SGAMBATI, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the United States District Court for the Southern District of New York (R. 11–12) is reported at 75 F. Supp. 18. The opinion of the United States Court of Appeals for the Second Circuit (R. 25–26) is reported at 172 F. 2d 297.

JURISDICTION

The judgment of the court of appeals was entered on February 3, 1949 (R. 26–27). The petition for a writ of certiorari was filed on May 2, 1949. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether infancy tolls the two-year period of limitations applicable to suits brought under the Public Vessels and Suits in Admiralty Acts.

STATUTES INVOLVED

Section 2 of the Public Vessels Act (43 Stat. 1112, 46 U. S. C. § 782) provides in pertinent part as follows:

> * * * Such suits shall be subject to and proceed in accordance with the provisions of [the Suits in Admiralty Act] or any amendment thereof, in so far as the same are not inconsistent herewith, except that no interest shall be allowed on any claim up to the time of the rendition of judgment unless upon a contract expressly stipulating for the payment of interest.

Section 5 of the Suits in Admiralty Act (41 Stat. 526, 47 Stat. 420, 46 U. S. C. § 745) provides in pertinent part as follows:

> * * * suits as herein authorized may be brought only on causes of action arising since April 6, 1917: *Provided,* That suits based on causes of action arising prior to the taking effect of this Act shall be brought within one year after this Act goes into effect: and all other suits hereunder shall be brought within two years after the cause of action arises * * *.

STATEMENT

The Public Vessels and Suits in Admiralty Acts confer jurisdiction only when suit is brought

within two years after the cause of action arises. 46 U. S. C. 745, 782, quoted *supra*. On December 27, 1942, petitioner, who was employed by Bethlehem Steel Company as a rigger, was injured while working aboard the U. S. S. *Bainbridge* (then designated the S. S. B–29). Petitioner was born on February 19, 1925 (R. 11), and was just short of eighteen years of age at the time the injury occurred. This libel was filed on February 13, 1947, more than four years after the cause of action arose and almost a year after petitioner reached his majority. Respondent's motion to dismiss the libel as barred by limitation was granted by the district court (R. 19). On appeal, the court below affirmed (R. 26).

ARGUMENT

The Court of Appeals, following its prior decision in *Osbourne* v. *United States*, 164 F. 2d 767, correctly stated the rule applicable to a period of limitation prescribed in a statute which creates a cause of action unknown at common law. In the absence of an express saving clause, "the period of limitation under any of these Acts will not be extended, as it would be in the case of an ordinary statute of limitations, by a claimant's disability to sue because of infancy or insanity or by a delay occasioned by the fraud of the defendant" (R. 26). And see *Anthony* v. *St. Louis, I. M. & S. Ry. Co.*, 108 Ark. 219; *Miller* v. *Industrial Commission*, 106 Colo. 364; *Elliott* v. *Brazil Block Coal Co.*, 25

Ind. App. 592; *Bohrer* v. *State Highway Comm.*, 137 Kan. 925; *Foster* v. *Railroad Co.*, 72 Miss. 886; *Ray* v. *Sanitary Garbage Co.*, 134 Neb. 178; *Gillette* v. *D., L. & W. R. R. Co.*, 91 N. J. Law 220; *Link* v. *Carolina & N. W. Ry. Co.*, 198 N. C. 78.

We submit that there is no reason here to depart from that rule. Petitioner could have sued by a next friend within the two-year limitation period. *New York Central & H. R. R. Co.* v. *Tonsellito*, 244 U. S. 360. Moreover, admiralty courts, unlike common law courts, do not regard a minor as necessarily incapable of bringing suit in his own name. *The David Faust*, Fed. Cas. No. 3595 (S. D. N. Y.); *The Melissa*, Fed. Cas. No. 9400 (E. D. Mich.); *Kelly* v. *The Topsy*, 44 Fed. 631 (D. S. C.); see Dunlap, *Admiralty Practice* (2d ed. 1850), pp. 97–98; II Parsons, *Shipping and Admiralty* (1869 ed.), p. 371; Cohen, *Admiralty Law* (1883), p. 163. Petitioner has made no attempt to show that, for any reason, it was impossible for him to file his claim within the statutory period. Cf. *Osbourne* v. *United States*, *supra*.

CONCLUSION

The decision below is correct, and there is no conflict of decisions. We respectfully submit that the petition for a writ of certiorari should be denied.

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